**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE**

**TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929**

**WP(C).No. 33443 of 2004(F)**
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**PETITIONERS:**
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**THE NEW INDIA ASSURANCE COMPANY LTD.,**
**REP. BY ITS ASST. ADMINISTRATIVE OFFICER,**
**REGIONAL OFFICE, M.G.ROAD, KOCHI-11.**

**BY ADV. SRI.P.R.RAMACHANDRA MENON.**

**RESPONDENTS:**
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1. **B.MURALIDHARAN PILLAI,**
   **S/O.BALAKRISHNA PILLAI, LAKSHMI BHAVANAM,**
   **AMMACHIVEEDU, KAIKULANGARA NORTH, KOLLAM-12,**
   **REP. BY HIS POWER OF ATTORNEY HOLDER**
   **A.PRAMESWARAN NAIR, SREE BHAVAM, PANACKAL CHERIYIL**
   **MAYYANADU VILLAGE, KOLLAM DISTRICT.**

2. **RADHAKRISHNAN,**
   **PUNNATHANATHU PADINJATTATHIL,**
   **KANNIMEL CHERRY, MARUTHADY P.O.,**
   **KOLLAM DISTRICT.**

* 3. **SIVAPRASAD, KOTTADATHU VEEDU,**
   **THATTAMALA P.O., KOLLAM DISTRICT.**

4. **THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,**
   **KOLLAM.**

***NAME OF R3 DELETED AS PER ORDER DATED 07/04/2005**
**IN I.A. 4599/2005.**

**BY ADV. SRI.P.B.SURESH KUMAR FOR R2.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.33443/2004:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE INTERIM ORDER DTD. 20/11/92 PASSED BY THIS HONOURABLE COURT IN CMP. 8987/92 IN MFA 1006/92 FILED BY THE R.1/INSURER.**

**EXT.P.2: COPY OF THE FINAL VERDICT DTD. 24/07/98 PASSED BY THIS HONOURABLE COURT IN MFA 1006/92.**

**EXT.P.3: COPY OF THE RECEIPT DTD. 05/10/98 IN RESPECT OF THE DEPOSIT MADE BY THE PETITIONER BEFORE THE R.4/TRIBUNAL AS TO THE ENTIRE AMOUNT COVERED BY THE EXT.P.2. VERDICT (ALONG WITH DEPOSITS IN OTHER CASES).**

**EXT.P.4: COPY OF THE EXECUTION PETITION (E.P.593/01) FILED BY THE R.1/INSURED BEFORE THE M.A.C.T KOLLAM AGAINST THE PETITIONER/INSURER.**

**EXT.P.4.A: COPY OF THE PETITION FOR ATTACHMENT OF MOVABLES FILED BY THE R.1/INSURED AGAINST THE PETITIONER/INSURER IN THE ABOVE EXECUTION PETITION.**

**EXT.P.5: COPY OF THE STATEMENT OF OBJECTION DTD. 27/08/03 FILED BY THE PETITIONER/INSURER IN THE ABOVE EXECUTION PETITION.**

**EXT.P.5.A: COPY OF THE PETITION DTD. 27/08/03 FILED BY THE PETITIONER/INSURER TO VACATE THE INTERIM ORDER OF ATTACHMENT PASSED BY THE R.4/TRIBUNAL.**

**//TRUE COPY//**

**prv.**

**PIUS C. KURIAKOSE, J.**

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W.P.(C)No.33443 OF 2004

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DATED THIS THE 26TH JUNE, 2007

**J U D G M E N T**

Heard the submissions of Mr.P.R.Ramachandra Menon, learned counsel for the petitioner and also those of Mr.P.B.Suresh Kumar, learned counsel for the 1st respondent who is the owner of the vehicle which was involved in the accident.

2. The grievance of the petitioner-Insurance Company is that even though the company has deposited a sum of Rs.73,685/- in full and final settlement of the company's liabilities under Ext.P2 judgment of this Court in M.F.A.1006 of 1992, Ext.P4 execution petition is filed by the 1st respondent seeking recovery of amounts from the petitioner-Company and the 1st respondent even succeeded in obtaining an interim order of attachment of movables belonging to the company.

3. Having regard to the submissions made at the Bar and having considered the averments in the Writ Petition and those in the counter affidavit filed by the 1st respondent and having appreciated the materials placed on record particularly Ext.P1 interim order and Ext.P2 judgment of this Court in M.F.A.No.1006 of 1992 as also Ext.P3 which will show that a sum of Rs.73,685/- was actually deposited by the petitioner-company towards satisfaction of the liabilities under Ext.P2

judgment, I am of the view that Ext.P4 execution petition was not maintainable before the Tribunal. May be, the 1st respondent has a grievance that the claimant has overdrawn amounts, but that is an issue to be settled between the 1st respondent and the claimant in appropriate other proceedings before the Tribunal itself. The petitioner-Insurance Company cannot be made liable.

In the result, allowing the Writ Petition it is held that Ext.P4 execution petition is not maintainable. The interim order of stay issued by this Court is made absolute. No costs.

**(PIUS C.KURIAKOSE, JUDGE)**

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